

**U.S. Department of Justice**

Environment and Natural Resources Division

90-11-3-10512/1

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July 19, 2018

VIA FEDEX OVERNIGHT DELIVERY

Interamerican Zinc Inc.  
Attention: Liquidator  
2727 Allen Parkway, Suite 800  
Houston, Texas 77019

Re: United States' Claim for Past and Future Response Costs for the Sandoval Zinc  
Superfund Site in Sandoval, Illinois

To Whom This May Concern:

Thank you for sending the Notice of Dissolution of Interamerican Zinc requesting that claimants of Interamerican Zinc alert the corporation of their claims.

The United States submits this claim against Interamerican Zinc for response costs incurred and to be incurred by the United States under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, for the cleanup of the Sandoval Zinc Superfund Site ("Site"). To date, the United States Environmental Protection Agency ("EPA") has incurred at least \$1,736,646.83 in response costs at the Site. EPA's response activities at the Site are ongoing and EPA will continue to incur additional response costs. Unless Interamerican Zinc can demonstrate that the harm at the Site is divisible among multiple responsible parties, Interamerican Zinc is jointly and severally liable for all costs incurred and to be incurred related to the United States' activities regarding the Site.

The Site is located in Sandoval, Marion County, Illinois. The Sandoval Zinc Company operated a primary and secondary zinc smelter at the Site. Interamerican Zinc is liable for EPA's response costs as a person that arranged for disposal or treatment of hazardous substances at the Site, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3). Interamerican Zinc is an "arranger" because it provided various lead containing wastes or residues to the Sandoval Zinc Company for treatment or disposal. EPA notified Interamerican Zinc of its potential liability at the Site on August 26, 2010.

Soil sampling at the Site has revealed lead contamination at residential properties that exceeds 1200 mg/kg and in some instances as high as 49,000 mg/kg. Accordingly, there have been releases of “hazardous substances” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), at the Site. The Site is a “facility,” within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a).

EPA performed a time-critical removal action at the Site to excavate and restore residential properties with lead levels above 1200 mg/kg between 2011 and 2012. EPA performed additional sampling in 2017 as part of its Feasibility Study for the Site. During this sampling, EPA discovered additional properties needing a time-critical removal action and completed such action in October 2017. EPA has completed the Remedial Investigation for the Site but the Feasibility Study is ongoing. The costs EPA has incurred associated with these activities, and others at the Site, are not inconsistent with the National Contingency Plan, promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, and as set forth at 40 C.F.R. Part 300.

In this case, to the extent that Interamerican Zinc seeks to distribute its assets through the dissolution and windup process, and its debts, including the United States’ CERCLA claim, exceed its assets, the Federal Priority Statute (“Priority Statute”) puts the United States’ claims first in line. The Priority Statute provides in pertinent part that claims of the United States must be paid first when a debtor of the United States is insolvent, but not in bankruptcy, and “the debtor without enough property to pay all debts makes a voluntary assignment of property . . . or an act of bankruptcy is committed.” 31 U.S.C. § 3713.

Under the Priority Statute, “[a] representative of a person or an estate . . . paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government.” 31 U.S.C. § 3713(b). *See, e.g., Bramwell v. U.S. Fidelity & Guaranty Co.*, 269 U.S. 483, 490 (1926). This provision is liberally construed. It gives the Priority Statute “teeth” by making a representative who pays creditors other than the United States personally liable for the amounts paid. *United States v. Moore*, 423 U.S. 77, 81 (1975). Thus, failing to afford EPA’s claim the priority required by the Priority Statute could result in imposition of personal liability on the liquidator or other payment authorizer.

In conclusion, the United States requests that the liquidator pay \$1,736,646.83 in past response costs incurred by EPA, and arrange for the payment of future response costs without the necessity of litigation in a federal court.<sup>1</sup> Please respond as to whether Interamerican Zinc

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<sup>1</sup> Please note that should Interamerican Zinc seek to proceed with dissolution proceedings in state court, the court would not have jurisdiction over the United States. Rather, United States district courts have jurisdiction of any case in which the United States is a party plaintiff. 28 U.S.C. § 1345 (“Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.”); *United States v. Silliman*, 167 F.2d 607, 610 n.5 (3rd Cir. 1948) (if the United States has a cause of action, a federal district court has jurisdiction). The United States district courts also have exclusive jurisdiction over all controversies arising under CERCLA. 42 U.S.C. § 9613(b). Moreover, the state court cannot compel the United States to prosecute its claim against Interamerican Zinc in state court because the doctrine of sovereign immunity bars suit against the United States without its consent. “It is elementary that ‘the United States, as sovereign, is immune from suit save as it consents to be sued . . .’” *United States v. Mitchell*, 445 U.S. 535, 538 (1980) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)).

accepts or rejects the United States' claim within 90 days of receiving this letter. Please contact me at the phone number above if you have any questions regarding this letter.

Sincerely,

Sparsh Khandeshi  
Trial Attorney  
U.S. Department of Justice

cc: Dana Murphy (via email)